

**UPPER TRIBUNAL (LANDS CHAMBER)**



**UT Neutral citation number: [2020] UKUT 142 (LC)  
UTLC Case Number: LRX/139/2019**

**TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007**

***PARK HOMES – PITCH FEE REVIEW – increase in line with the retail prices index –  
increase as a result of the site owner’s improvements***

**IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE FIRST TIER  
TRIBUNAL (PROPERTY CHAMBER)**

**BETWEEN:**

**WYLDECREST PARKS  
(MANAGEMENT) LTD**

**Appellant**

**and**

**MRS TRUZZI-FRANCONI AND OTHERS**

**Respondent**

**Re: Wickens Meadow Park  
Rye Lane  
Dunton Green  
Sevenoaks, Kent  
TN14 5JB**

**Judge Elizabeth Cooke  
Determination by written representations**

The following cases are referred to in this decision:

*PR Hardman and Partners v Fox, Greenwood and others* [2019] UKUT 248 (LC)

*Re Sayer* [2014] UKUT 283 (LC)

*Wyldecrest Parks (Management) Ltd v Kenyon* [2017] UKUT 28 (LC)

## Introduction

1. This is an appeal about the pitch fee payable for the right to station mobile homes at Wickens Meadow Park in Sevenoaks. The appellant, Wyldecrest Parks (Management) Ltd, is the site owner; it is appealing the decision of the First-tier Tribunal (“the FTT”) of 16 October 2019 about the pitch fee for 2019. The respondents are the owners of mobile homes on pitches 6, 12, 14, 15, 16, 17, 20, 33 and 35.
2. In giving permission to appeal in January 2020 I directed that the appeal would be determined under the Tribunal’s written representations procedure. The appellant was not legally represented; the respondents were represented by Markel Law LLP. Neither party has been legally represented; Ms Truzzi Franconi has corresponded with the Tribunal on the respondents’ behalf.
3. The appeal succeeds, and the Tribunal substitutes its own decision for that of the FTT. In the paragraphs that follow I summarise the law, and explain the factual background to the appeal and the decision made by the FTT. I then consider the issue raised in the appeal and explain my conclusion.

## The law

4. Part I of Schedule 1 to the Mobile Homes Act 1983 (“the 1983 Act”) implies terms into agreements under which a person is entitled to station a mobile home on a protected site and to live there; it is not in dispute that Wickens Meadow Park is a protected site as defined in the Caravan Sites Act 1968.
5. Paragraph 29 of Schedule 1 to the 1983 Act defines a pitch fee as:

“the amount which the occupier is required by the agreement to pay to the owner for the right to station the mobile home on the pitch and for the use of the common areas of the protected site and their maintenance, but does not include amounts due in respect of gas, electricity, water and sewerage or other services, unless the agreement expressly provides that the pitch fee includes such amounts.”
6. Paragraph 21 implies into the relevant agreements the obligation on the part of the occupier to:

“(a) pay the pitch fee to the owner;

(b) pay to the owner all sums due under the agreement in respect of gas, electricity, water, sewerage or other services supplied by the owner.”
7. The pitch fee derives from the agreement between the site owner and the occupier; the Schedule implies an obligation to pay it only if the agreement requires a pitch fee to be

paid. The pitch fee is “the consideration paid by the occupier for the right to live in the mobile home on the pitch” as the Tribunal put it at paragraph 40 of *PR Hardman and Partners v Fox, Greenwood and others* [2019] UKUT 0248 (LC). It is not a service charge, unlike the payment described at paragraph 21(b), because it does not vary with the cost of services.

8. Paragraph 16 of Schedule 1 states that the pitch fee can be changed only if the site owner follows the procedure set out in paragraph 17, and then only if either the occupier agrees or the FTT considers it reasonable for the pitch fee to be changed and makes an order determining the new fee. Paragraph 20 imposes a presumption that the pitch fee will not increase or decrease by more than the increase or decrease in the retail prices index (“the RPI”) each year, but it provides that that presumption can be displaced if it would generate an unreasonable result having regard to paragraph 18(1).
9. It is worth noting that paragraph 20 does not give the site owner an entitlement to an increase in the pitch fee in line with the RPI, although it has come to be regarded in that light (as the Tribunal remarked at paragraph 22 of *Re Sayer* [2014] UKUT 0283 (LC)).
10. Paragraph 18(1) provides as follows:

“18(1) When determining the amount of the new pitch fee particular regard shall be had to—

  - (a) any sums expended by the owner since the last review date on improvements—
    - (i) which are for the benefit of the occupiers of mobile homes on the protected site;
    - (ii) which were the subject of consultation in accordance with paragraph 22(e) and (f) below; and
    - (iii) to which a majority of the occupiers have not disagreed in writing or which, in the case of such disagreement, the court, on the application of the owner, has ordered should be taken into account when determining the amount of the new pitch fee;
  - (b) any decrease in the amenity of the protected site since the last review date; and
  - (c) the effect of any enactment, other than an order made under paragraph 8(2) above, which has come into force since the last review date.”
11. It is well-established that paragraph 18(1) does not set out an exclusive list of matters that may justify a departure from the paragraph 20 presumption; it says only that “particular regard” is to be paid to the matters it sets out (*Wyldecrest Parks (Management) Ltd v*

*Kenyon* [2017] UKUT 28 (LC)). Relevant to the present appeal is paragraph 18(1)(a), because the increase in the pitch fee that is in issue here relates to the appellant's expenditure on improvements that benefit the respondents. The issue, as will be seen, is not whether the improvements should mean a change in the pitch fee, but what that change should be.

### **The factual background and the FTT's decision**

12. I can summarise the issue between the parties as follows. On 16 April 2019, in proceedings between the parties relating to the 2018 pitch fee, the FTT determined that the pitch fee for 2018 should rise, for each pitch, by £6.31 above the rise in the RPI that year, because the appellant had made improvements to the site that benefited the respondents. I refer to that decision as "the 2018 decision" because it was about the 2018 fee.
13. The appellant and the respondents were then unable to agree the 2019 pitch fee. The appellant wanted it to be the 2018 fee as determined by the 2018 decision, increased by the rise in the RPI. The respondents disagreed; they wanted the 2019 fee to be calculated by subtracting £6.31 from the 2018 fee and only applying the RPI to the balance. Accordingly the appellant sought a determination of the 2019 pitch fee by the FTT. The respondents in reply argued that what the FTT had decided in the 2018 decision was that a sum of £6.31 should be added to the fee for each pitch, each year, for 20 years only, and that the annual increase in line with the RPI should not be applied to that £6.31.
14. The FTT in its decision of 16 October 2019 ("the 2019 decision") observed that "there is nothing in the 1983 Act to say that the RPI always has to apply to the whole pitch fee." It agreed with the respondents' analysis of the 2018 decision and said:

"29. The April 2019 decision is lengthy and will not be repeated here. It has not been appealed. However, what is clear is that the £6.31 per month for 20 years is to make up a fixed sum to contribute to costs. The decision must then clearly be interpreted as saying that after 20 years, the £6.31 per month ceases to be payable and the pitch fee will then go back down to a 'base' level.

30. There are only 2 conclusions which this Tribunal can draw from this. First, if RPI is applied to the whole pitch fee, then at the end of 20 years, such 'base' level will be higher than it should be because it will include what amounts to interest being added over the years on the £6.31. Secondly, the natural inference from the April decision, when read as a whole, is that the occupiers are simply being asked to repay the Applicant for the fixed cost of the works only. These are calculated to the last penny and are set out in the decision.

31 The Tribunal concludes that it would be unreasonable, having regard to the April 2019 decision and the representations now made by all parties, that RPI should be added to that part of the pitch fee which represents a reimbursement of fixed costs incurred i.e. the £6.31 per month. It is also clear that the £6.31 per month must be deducted from the pitch fee after 20 years of payments.

32. As to the Applicant's comment that an improvement was just that and was still an improvement after 20 years, the Tribunal making the April 2019 decision clearly took the view that it could either increase the pitch fee to take [the] improvement into account or quantify the recoverable cost of the works and order recompense. It had taken the second option. The Applicant seems to be saying that it should recover the cost and also have more money by way of double recompense."

15. The October decision contained no extracts from the April decision and it is not easy to see why the FTT came to that conclusion. The members who made the April decision were not the same as those who sat in October, so it was not a matter of the same members confirming what they had intended to decide. In refusing permission to appeal the FTT referred to paragraph 37 of its April 2019 decision, and I revert to that below.

### **The appeal**

16. The appellant says that the FTT in October misinterpreted its April decision and was wrong to treat the £6.31 as a separate element of the pitch fee and in effect a service charge, merely reimbursing the site owner for the cost of improvements.
17. The respondents in their written representations say that the appellant is trying to appeal the 2018 decision out of time. They take the view that the addition of £6.31 to the pitch fee each year for 20 years was an amortisation of the cost of the improvements and is exempt "by definition" from the RPI increase.
18. So I turn to the 2018 decision. In doing so I do not suggest that the Tribunal is bound by that decision, but as a first step it is obviously essentially to decide whether the FTT in October 2019 construed the 2018 decision correctly.
19. The 2018 decision is, as the FTT said, a long one. The appellant sought a change in the pitch fee for 2018, comprising an adjustment of +4% in line with the RPI for the relevant period and an additional £28.13 per pitch per week for improvements to the site. It arrived at that figure by taking the cost of the works done and then spreading it over a period of 20 years and dividing by the number of pitches, being 35; as the FTT explained at paragraph 13 of the April 2019 decision "The £256,615.76 capital cost was then spread over 20 years (£12,831.79 pa) and amounted to £337.65 pa for each of the original pitches. This was equivalent to £28.13 per pitch per annum." There seems to be an arithmetical error there, because £12,831.79 divided by 35 is £366.62, but as will be seen that is immaterial to the present appeal.
20. The RPI-related increase was not in dispute but the amount relating to improvements was. It was uncontroversial that improvements could lead to an increase in the pitch fee, as is paragraph 18(1) of Schedule 1 to the 1983 Act provides. But the respondents claimed that much of the appellant's expenditure did not amount to improvement and did not benefit the occupiers; they also said that there had been some deterioration to the site. Moreover, they were unhappy with the idea that the RPI-related increase would apply in the future to the amount not claimed for improvements. At paragraph 29 the FTT noted, as one of the

respondents' concerns, that "the Applicant's proposals effectively meant the £28.13 per month would increase by inflation every year." And at its paragraph 37 the FTT said:

"The approach adopted by the Applicant is to adopt the RPI increase as a starting point and then adjust this for paragraph 18(1)(a) of Sch.1 considerations. The adjustment is approached by applying the expenditure on paragraph 18(1)(a) improvements, amortising it over an appropriate period and then allocating the resulting figure over a period of time. Although the Respondents point out that this effectively locks in an RPI increase over time, no other approach to paragraph 18(1) was suggested."

21. I quote those two passages that because it is now being suggested that the appellant has changed its stance and did not argue in the context of the 2018 pitch fee that the amount attributed to improvements should be subject in the future to the RPI related increase. The wording is not entirely clear but I read these two passages as indicating that the increase related to improvements was intended by the appellant (the applicant in the FTT) to be subject to an RPI-related increase each year.
22. The FTT then turned to the analysis of the works done and the sums spent so as to determine to what extent the site had been improved so as to benefit the respondents. In paragraphs 38 to 45 the FTT went through six elements of the claimed expenditure and also considered and rejected the respondents' claim that the site had deteriorated. Paragraph 46 concluded the decision as follows:

"The Tribunal therefore takes into account expenditure on improvements amounting to £53,035.77. Over a 20-year period, this amounts to £2,561.79, or £75.77 per pitch per annum. The equivalent monthly pitch fee change would be £6.31 for each pitch, detail of which appear in Appx 3 to this Decision. When added to the RPI figures for each pitch, the new monthly pitch fees are as follows:"

23. I need not reproduce the table, which simply sets out the current pitch fee for each pitch, applies the RPI increase to it and then adds £6.31.
24. So what did the FTT decide in the 2018 decision?
25. First, it said nothing to contradict the parties' own assumption that the RPI-related increase would apply to the improvement-related increase (the £6.31) each year. It identified that as one of the things the respondents were unhappy about but said that no other approach had been suggested; see paragraphs 20 and 21 above. The FTT said nothing else about that in its decision, and as a matter of construction I take the view that it decided that the RPI-related increase would apply to the whole of the pitch fee.
26. Very clear and explicit words would have been needed to decide the contrary. The £6.31 was part of the pitch fee, and if the RPI rate was not to apply to that element of the pitch fee then the pitch fee as a whole would be increased by less than the RPI; a decision that the RPI-related increase would not apply to £6.31 of the pitch fee each year would have

amounted to a decision, for each of the following 19 years, that the presumption in paragraph 20 was displaced and that it was unreasonable for the pitch fee to be increased in line with the RPI, as required by paragraph 18(1). It is difficult to see how the FTT could have intended to make that decision without mentioning that it was displacing the presumption, and doing so for many years into the future. It is difficult to see how it could have had jurisdiction to do so since no proceedings in relation to the next 19 years were yet on foot. There is no basis for construing the 2018 decision in that way.

27. Second, there is no mention in the 2018 decision of the idea that the £6.31 would cease to be added to the pitch fee after 20 years.
28. Again, such a decision would have displaced the paragraph 20 presumption in relation to the pitch fee for 2038. Very clear words would have been needed to make such a decision, and there is no hint that such a decision was being made. Moreover, before the FTT can take any decision about the 2037 pitch fee the site owner will have to go through the procedures set out in Schedule 1 to the 1983 Act and there would have to be an application to the FTT if no agreement was reached.
29. The FTT in refusing permission to appeal referred to paragraph 37 of its April 2019 decision, which I quoted above at my paragraph 20. It regarded that paragraph as a foundation for its view that the £6.31 should cease to be payable after 20 years. In so doing it seems to have mistaken the appellant's initial calculation of the charge for improvement – by spreading the capital cost over what might be regarded as a period that made it manageable for the occupiers – with the end result, which is a pitch fee that represents consideration for an improved site.
30. Accordingly I conclude that the FTT in October 2019 misconstrued its 2018 decision, which did not decide either that the RPI-related increase would apply only to part of the pitch fee thereafter, and not to the £6.31 added in 2018 in respect of improvements, or that the sum relating to improvements would cease to be payable after 20 years. On the contrary, it added a sum to the pitch fee by way of consideration for the improved site, calculated by reference to the cost of the improvements; that generated a new pitch fee for 2018, which would be treated for the future as a single fee, subject to the implied terms of Schedule 1 to the 1983 Act and in particular to the paragraph 20 presumption in the usual way.
31. I reach that conclusion as a straightforward matter of construction of the 2018 decision. However, it is also worth noting that the construction for which the respondents argue, and that the FTT adopted in its 2019 decision, would generate a perverse result. The £6.31 was calculated by dividing the total expenditure – as assessed by the FTT – by 20 and then by the number of pitches (35). If all the site owner gets back is its cost, spread over 20 years, then there is no incentive for it to make improvements. Indeed, it would be out of pocket, because it has to wait 20 years for reimbursement without any RPI-related increase as a proxy for interest. The RPI-related increase goes some way to compensating the site owner for delayed reimbursement. Moreover, if the additional charge ceases after 20 years, from then onwards the occupiers are paying only for an unimproved site. Such a decision would have deterred site owners from ever improving their sites. The construction that the



appellant places on the 2018 decision, far from giving it a double recovery, provides for the recovery of cost, over time, together with some consideration for the improvements by way of a return on the site owner's investment.

## **Conclusion**

32. The FTT misinterpreted its 2018 decision and thereby made an error of law in its 2019 decision. The 2019 decision is set aside. What the appellant wants to charge by way of pitch fee in 2019, namely the 2018 fee increased by the same rate as the RPI over the relevant period, is consistent with the 2018 decision, properly construed. The result is a perfectly reasonable one. I substitute the Tribunal's own decision that the pitch fee for 2019 is as claimed by the appellant.

**Judge Elizabeth Cooke**

**28 April 2020**